

Action Item 3PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>June 12, 2019</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2018-364-WS</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2019-424</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.**SUBJECT:**

DOCKET NO. 2018-364-WS - Stephen and Beverly Noller and Michael and Nancy Halwig,
Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent -
Staff Presents for Commission Consideration Stephen and Beverly Noller and Michael and Nancy Halwig,
Complainants/Petitioners v. Daufuskie Island Company, Incorporated, Defendant/Respondent.

COMMISSION ACTION:

As you may recall, we had the attorneys argue the jurisdictional threshold issue before the Commission earlier this year, as to whether or not the Commission even had subject-matter jurisdiction to hear this dispute where the parties are seeking a monetary award based on a contract issue.

I'm going to move that we dismiss the case, as the Public Service Commission does not have the statutory authority to grant monetary damages, which is the relief requested in the pleadings. And as a part of the motion, I'd like to add that the Commission, of course, does have the authority to deal with service-connection and termination issues, and, therefore, as a part of the motion, the dismissal should not result in a disconnection of service to either of the Complainants' residences during the pendency of this contractual dispute. So to the extent that it is within our jurisdictional authority, I move that we stay any disconnection of service for the residences in question, while these contractual disputes are pending.

PRESIDING: RandallSESSION: RegularTIME: 12:30 p.m.

	MOTION	YES	NO	OTHER
BELSER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Recused</u>
ERVIN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WILLIAMS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

RECEIVED
 AUG 13 2019
 SC Court of Appeals

(SEAL)

RECORDED BY: J. Schmieding



Action Item 4PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVEADMINISTRATIVE MATTER ☐MOTOR CARRIER MATTER ☐UTILITIES MATTER ☒DATE July 17, 2019DOCKET NO. 2018-364-WSORDER NO. 2019-523**RECEIVED**
AUG 13 2019
SC Court of Appeals**THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.****SUBJECT:**DOCKET NO. 2018-364-WS - Stephen and Beverly Noller and Michael and Nancy Halwig, Complainants/Petitioners v. Daufuskie Island Utility Company, Incorporated, Defendant/Respondent - Staff Presents for Commission Consideration the Complainants' Petition for Rehearing or Reconsideration.**COMMISSION ACTION:**

On June 12, by Commission Order No. 2019-424, we dismissed the Complaint of the Nollers and the Halwigs against Daufuskie Island Utility Company. On June 21, the Complainants timely filed a Petition for Reconsideration and/or Rehearing. The Company did not file a response to the Petition.

The Complainants seek reconsideration or rehearing on three grounds or matters:

1) The Complainants state that the Commission does have jurisdiction over the matter, because DIUC has failed to provide adequate and proper water and sewer services to the Complainants. However, DIUC began providing water and sewer service to the homeowners in December of 2018. This issue has long-since been rendered moot.

2) The Complainants state that the Commission has jurisdiction to hear this matter in order to remedy the failure of DIUC to submit the Customer Service Agreement for approval (pursuant to S.C. Code Reg. 103-541 and 103-743) before it was entered into with Homeowners. While it is true that this Commission has broad authority over approval of contracts entered into by regulated entities, even if the Commission were to find such actions were violative of properly promulgated regulations, that would still not grant the Commission an ability it does not possess, i.e., we cannot grant monetary damages under an allegedly invalid contract, and in this Petition the Complainants are seeking monetary damages, and that would be for a court of competent jurisdiction, not a proper matter for the South Carolina Public Service Commission.

3) The Complainants believe the Commission has the ability to provide monetary damages to the Complainants. In fact, the Complainants cite S.C. Code Ann. Section 58-5-270 and Section 58-5-710.

Under -270, the Commission certainly does have the jurisdictional authority to hear complaints properly brought before it. However, in this case, monetary damages are being sought – and the Commission simply does not have the authority to grant such an award.

The Commission does have authority under -710 to levy a fine or penalty against a regulated utility if the utility is failing to show cause as to why it is not taking steps to provide adequate water and sewer service. As I mentioned earlier, service has been and is continuing to be rendered to the Complainants. Even if that weren't that case, any fines or penalties levied by this Commission go into the General Fund of the State, not to the Complainants.

For these reasons, I move that the Complainants' Petition for Rehearing and/or Reconsideration should be denied in its entirety.

PRESIDING: RandallSESSION: RegularTIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
BELSER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Recused</u>
ERVIN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u>

Military Leave

RECORDED BY: J. Schmieding

(SEAL)



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South Carolina Office of Regulatory Staff
 1401 Main St., Suite 900 Columbia, SC 29201 Phone: 800-922-1531 Fax: 803-737-4750

Consumer Complaint/Inquiry Form

Please complete this form, save it to your computer and then send it to complaints@regstaff.sc.gov. A member of the SC Office of Regulatory Staff will be in contact with you to address your complaint or inquiry. If your utility service is scheduled for disconnection, please call the ORS at 1-800-922-1531. Please fill out all fields marked with an asterisk *, as they are required. Failure to complete required fields may cause a delay in responding to you.

Name*	John M. Halwig	Date*	11/8/16
Address*	46 Driftwood Cottage Lane		
City*	Daufuskie Island	ZIP Code*	29915
Phone Number*	(404) 406-0416	Email	JMHalwigMD@aol.com
What utility/company is your complaint regarding?*	Daufuskie Island Utility Company		
What is your account number?			
Are you an authorized contact person for the account?*	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

Please outline your complaint below. Be brief as the field is limited to 1000 characters. Further detail, if needed, can be gathered when a member of the ORS staff contacts you.*

I have requested specific information regarding the status of the Driftwood Cottage Lane water/sewer service and when service will be restored on 10/20/16 and again on 11/1/16. I have been advised that an outside contractor was retained to fix the sewer service but that there is not a specific date service will be restored. We have been without water/sewer service since Hurricane Matthew on 10/8/16 and have not been able to stay in the home.

To save or print the form, click on the Save/Print Form button below.

To save the form, choose Adobe PDF as your printer, then click print. This will bring up a menu asking where you want to save the document to your computer. Once you have saved the form, you can submit it through email or print it and fax or mail it to the ORS using the information listed at the top of this page.



Complainants 00051

ELECTRONICALLY FILED - 2019 January 23 3:24 PM - SCPSC - Docket # 2018-364-WS - Page 1 of 8

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLIA
DOCKET NO. 2018-364

Stephen and Beverly Noller and)
Michael and Nancy Halwig,)
Complainants,)
v.)
Daufuskie Island Utility Co., Inc.,)
Respondent.)

DIRECT TESTIMONY OF
MICHAEL HALWIG
ON BEHALF OF COMPLAINANTS

ACCEPTED FOR PROCESSING - 2019 January 17 3:40 PM - SCPSC - 2018-364-WS - Page 39 of 200

DAUFUSKIE ISLAND UTILITY COMPANY, INC.
c/o GUASTELLA ASSOCIATES, LLC
6 Beacon Street, Suite 200
Boston, MA 02108
617-423-7878

December 10, 2015

Mr. J. Rene Josey, Esq.
Turner | Padgett
319 South Irby St.
P.O. Box 5476
Florence SC 29502

Re: Michael and Nancy Halwig
46 Driftwood Cottage Lane
TPGL File No.: 13926.101

Dear Mr. Josey:

Daufuskie Island Utility Company (Company) will continue to preserve, maintain and provide service to all customers within its service area, including service to the Halwig property. The Driftwood service area has been and continues to be monitored daily regarding the erosion problem. In accordance with conversations with Mr. Crow and members of the Office of Regulatory Staff of South Carolina, we will continue to provide utility service as originally designed and in compliance with all regulatory requirements.

It is, however, the Halwig's responsibility for an alternative extension of mains and facilities to provide water and sewer service to their property, subject to our approval of the design and construction. The cost of any alternative would be the responsibility of the Halwigs, because it is not appropriate for the Company to incur such costs which would then be passed on to its other customers through the rate setting process. An alternative extension will be considered under the provisions of a 'Customer Main Extension Fee' contract, Reg. 103-502.3, "A fee paid by a customer under a contract entered into by and between the utility and its customer providing terms for the extension of the utility's mains to service the customer".

We would, of course, work with the Halwigs' contractor to accomplish an alternative extension from another location of our existing distribution system.

GUASTELLA ASSOCIATES, LLC
Manager of DIUC



Mike J. Guastella
Vice President-Operations

Complainants 00035

1 DAUFUSKIE ISLAND UTILITY COMPANY, INC.
2 DOCKET NO. 2018-364-W/S
3 Testimony of John F. Guastella
4 Before the South Carolina
5 Public Service Commission
6 Testimony Prepared: February 6, 2019
7 Hearing Date: February 28, 2019
8
9 Q. Please state your name and business address.
10 A. John F. Guastella, 725 N. Highway A1A, Suite B103, Jupiter, Florida 33477.
11 Q. What is your occupation?
12 A. I am president of Guastella Associates, LLC ("GA").
13 Q. Briefly describe GA?
14 A. Guastella Associates provides utility rate, valuation and management consulting
15 services.
16 Q. Have you previously testified before the South Carolina Public Service
17 Commission ("PSC")?
18 A. Yes.
19 Q. Have you attached to this testimony a summary of your qualifications and
20 experience as well as a list of proceedings wherein you have testified as an
21 expert?
22 A. Yes. The document is Exhibit JFG 4.

1 sandbags and dumping tons of sand backfill, successive storms completed the
2 destruction and caused even further erosion. MPOA concluded that it cannot
3 reconstruct or protect Driftwood Cottage Lane because it is not allowed to use the
4 materials necessary to ensure any permanence to the effort.

5 Q. What was the alternative to providing water and sewer service to the
6 Complainants?

7 A. Without the Driftwood Cottage Lane roadway, it became the responsibility of the
8 Complainants to enter into a main or service extension agreement with DIUC and
9 arrange for the construction of new mains that would connect to DIUC's nearest
10 existing mains. Pursuant to state regulations, a utility can charge a Customer Main
11 Extension Fee, which S.C. Reg. §103-502.3 defines as "A fee paid by a customer
12 under a contract entered into by and between the utility and its customer providing
13 terms for the extension of the utility's mains to service the customer."

14 Q. What would be the appropriate cost responsibility under a main extension
15 agreement?

16 A. Under universally recognized rate setting principles, regulated utilities must charge
17 its customers just and reasonable rates as approved by their regulatory agency.
18 Tariff rates for service include usage rates for connected customers as well as
19 availability rates, both of which are designed to cover the annual operating and
20 capital costs of providing service or having service available. In addition to
21 covering costs, the tariff rates must be designed to reflect intergeneration equity so
22 that current and future customers pay their fair share of the cost of facilities
23 available to serve today's and tomorrow's customers. The rate setting principle of

1 equitable treatment among customers also applies to new extensions of mains and
2 facilities necessary to serve reasonably permanent customers, for which charges are
3 not specific but instead based on a determination of the investment a utility should
4 incur for the new extension that is comparable to its average investment to serve its
5 existing customers.

6 **Q. Have you applied that analysis to the current facts?**

7 **A.** Yes. On the basis of the position of the MPOA that there is no permanency to
8 support its replacement of the Driftwood Cottage Lane roadway, along with the
9 evidence of high tide intrusion around the Complainants' properties, continuing
10 erosion, and recognition that other customers along Driftwood Cottage Lane have
11 abandoned their properties, the Complainants cannot be considered reasonably
12 permanent customers. Accordingly, no investment should be made by DIUC
13 because it is unlikely that the Complainants would generate ongoing revenues to
14 support an investment comparable to the average investment reflected in the rates
15 being paid by existing customers, thereby shifting the risk of the cost recovery of
16 the investment from the Complainants to existing customers through future rate
17 setting. To proceed otherwise by volunteering to construct and/or absorb costs for
18 the construction and equipment (as sought by the Complainants) would result in
19 unjust and unreasonable rates as to its other customers. Additionally, that result
20 would violate the rate setting principle of equitable treatment among customers.

21 **Q. Using the cost of the extension that has been installed pursuant to the**
22 **Customer Service Agreement between DIUC and the Complainants, and in**
23 **order to provide a complete record for the Commission's deliberations, have**

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1 DAUFUSKIE ISLAND UTILITY COMPANY, INC.

2 DOCKET NO. 2018-364-W/S

3 Testimony of Michael J. Guastella

4 Before the South Carolina

5 Public Service Commission

6 Testimony Prepared: February 6, 2019

7 Hearing Date: February 28, 2019

8
9 Q. Please state your name, business address, employer and title.

10 A. Michael J. Guastella, 725 North Highway A1A, Suite B103, Jupiter, Florida 33477.

11 I am employed by Guastella Associates, Inc. ("GA") and my job title is Vice
12 President of Operations.

13 Q. Will you briefly describe GA?

14 A. Yes. Guastella Associates provides utility rate, valuation and management
15 consulting services.

16 Q. What are your job duties?

17 A. I am responsible for overseeing operations and management of Daufuskie Island
18 Utility Co., Inc. ("DIUC").

19 Q. How long have you been working with DIUC?

20 A. I began working with DIUC in 2010, and have continued to do so since that time.

21 Q. How have you organized your testimony?

22 A. My testimony is in the customary question and answer format. I have also
23 assembled and hereby provide the Commission with exhibits as follows:

- 1 • Exhibit MJG-1 Oblique Aerial Photo
- 2 • Exhibit MJG-2 Letter from Josey to Guastella, November 10, 2015
- 3 • Exhibit MJG-3 Labelled Map of Driftwood Cottage Lane

4 Also, it is my intent that these exhibits be incorporated into my testimony so that I
5 may rely upon them, where appropriate, as if fully set forth herein. My testimony
6 also cites to documents on file with the Commission in this docket. Pursuant to
7 S.C. Reg. § 103-847, I have not produced additional copies of those documents as
8 exhibits to my testimony.

9 **Q. Have you reviewed the Complaint and testimony of the Complainants**
10 **submitted in this matter?**

11 **A. Yes. I have reviewed the Complaint as well as the prefiled direct testimonies of**
12 Michael Halwig, Nancy Halwig, and Beverly Noller. Each of the three
13 Complainants (Halwig, Halwig, and Noller) provided the identical testimony
14 consisting of three (3) pages each.

15 **Q. The Complaint states: "DIUC forced the Halwigs and Nollers to install**
16 replacement water and sewer mains for all lots on Driftwood Cottage Lane
17 since they were destroyed by Hurricane Matthew." How do you respond to
18 that?

19 **A. First, it is important to understand the geography of the area at issue. The**
20 Complaint implies by stating "all lots on Driftwood Cottage Lane" that there are
21 other affected residents on Driftwood Cottage Lane. That is not true. Of the four
22 homes impacted, two have already been abandoned and they appear to be falling
23 into the sea. Only the Complainants' homes remain. The photos attached to our

1 Answer show the area at issue. Second, the water and sewer infrastructure was not
2 the only thing destroyed by Hurricane Matthew. After the hurricane there was no
3 Driftwood Cottage Lane to access the Complainants' homes. The road washed into
4 the sea. And this was, in fact, the second time Driftwood Cottage Lane was
5 destroyed by erosion.

6 **Q. What is the area like now?**

7 **A.** As shown in the photos submitted with DIUC's Answer, there are four houses on
8 Driftwood Cottage Lane (DCL, for short). Two houses have been abandoned.

9 **Q. Have you attempted to obtain a photograph of what the area of DCL looked**
10 **like in the past?**

11 **A.** Yes. Attached hereto as Exhibit MIG 1 is an image received from SCDHEC in
12 response to a FOIA request. It is entitled "Oblique Aerial, Beaufort County" and
13 indicates a flight date of Spring 2007. It shows generally the original locations of
14 Driftwood Cottage Lane and is consistent with my understanding of the facts. That
15 area has significantly changed since then.

16 **Q. Perhaps that is a good place to start your testimony. Would you please provide**
17 **the Commission with the background facts you believe might be helpful to the**
18 **determination of this matter?**

19 **A.** Sure. One of the original developers of Daufuskie Island constructed Driftwood
20 Cottage Lane (DCL) and sold residential real estate lots on the ocean side as well
21 as the island side of DCL. Water and sewer infrastructure were installed in the
22 easements and right-of-ways adjacent to the roadways. Over the following decades,
23 purchasers of property on DCL along with the on-island property owners'

1 association (Melrose Property Owners Association) fought to protect DCL from
2 erosion. The battle has been costly endeavor.

3 DIUC's current Chief Operator, Eric Johanson, began employment with the Haig
4 Point Utility in January 1999 and has worked on the island continually since that
5 time. During his earliest years of employment, he would often assist Melrose
6 Utility Co. with various operations and became familiar with the erosion of DCL.
7 The costly and ultimately losing battling against the eroding effects of the Atlantic
8 Ocean continued, and providing DCL's seaward lots with water and sewer service
9 remained a constant challenge. Preserving the infrastructure was difficult give the
10 erosion and safety was a concern, particularly with regard to sewer structures in the
11 area.

12 In 2011 DCL was relocated to the area behind the residences at 29 and 33 DCL.
13 Utility infrastructure was reinstalled (at the Utility's expense). As the entity
14 responsible for maintain the roadway, MPOA paid for the relocation of DCL.

15 Between 2011 and 2015, 29 DCL and the land beneath and around both 29 DCL
16 and 33 DCL eroded to the point that the homes were abandoned. At the time of
17 abandonment both these locations had lost significant ground to the erosion and
18 had lost both the utility mains and customer service lines that provided water and
19 sewer services to the homes. Current photos of the area are included in DIUC's
20 Answer. *See* DIUC Answer, 12-17-2018, at pp.3 to 6. At no time during those
21 years did the customers at 29 DCL and 33 DCL ask or expect DIUC to provide
22 erosion control and/or protection from erosion to prevent the abandonment of these
23 properties. Even after relocating DCL, the MPOA continued to attempt to preserve

1 the road. In the spring of 2015, the MPOA obtained a Department of Health and
2 Environmental Control (DHEC) Ocean and Coastal Resource Management
3 (OCRM) permit to construct approved protective devices, which consisted of
4 sandbags and backfill to protect the road. The MPOA spent over \$60,000.00 to do
5 so. Despite these costly protective devices, the erosion destroyed the road causing
6 the abandonment of 29 and 33 DCL. See Email, December 19, 2016, from Julie
7 DiIullo, MPOA President, to Mike Guastella, Produced with DIUC's Response to
8 Complainants' First Set of Discovery at DIUC 0140.

9 In the months leading up to October of 2015, the DCL roadway and its residential
10 lots continued eroding, especially during high tides. Significant portions of the land
11 were destroyed in October 2015 when historic rain storms and Hurricane Joaquin
12 battered the Island. South Carolina's Governor and President Obama declared a
13 National Emergency for South Carolina.

14 DIUC had been monitoring the water and sewer facilities serving the remaining two
15 residences on DCL (Halwig and Noller). During this time DIUC was especially
16 concerned about safety. Among other things, DIUC was obligated to prevent any
17 extraordinary inflow of ocean water into its sewer system because that could affect
18 the treatment process of collected wastewater. The lots on DCL presented a real
19 danger for the inflow of ocean water due to the constant assault of the tides, wind,
20 and erosion. Also, DIUC remained concerned about any possible loss of pressure
21 due to damage of its water distribution system because of erosion by ocean. Losing
22 water pressure was a risk to DIUC's ability to provide safe and adequate service to
23 all its customers.

1 In the last days of October 2015, Eric Johanson attended a rate case hearing before
2 the SC Public Service Commission (PSC). However, immediately after providing
3 his testimony Mr. Johnson had to be excused from the rate case hearing "to return
4 to the island to address some emergency issues." See Docket 2014-346-WS,
5 Hearing Transcript page 112, lines 10-14. DIUC's facilities had suffered extensive
6 damage from the severe rain event, high tides, wave action, and erosion. The
7 facilities and service at DCL had been rendered unsafe. Continuing to provide
8 service presented hazardous and dangerous conditions. In accordance with
9 applicable laws, including S.C. Reg. § 103-535, service was discontinued to 36 and
10 46 DCL, the residences owned by the Complainants Halwig and Noller. DIUC
11 notified the customers, and regulatory agencies then proceeded to attempt to
12 arrange for repairs. Ultimately, Terry Lee Contracting installed bell restraints
13 around the seams of the exposed portion of the 8" water main. Photographs of these
14 repairs are included with DIUC's Response to Complainants' First Set of Discovery
15 at DIUC 0137. These repairs enabled DIUC to continue providing water and
16 sewer services to the customers, without jeopardizing the rest of the water and
17 sewer system.

18 During October 2015, DIUC received its first communications from the
19 Complainant Halwig regarding 46 DCL. On October 14, 2015, Mr. Halwig
20 contacted DIUC through its website stating:

21 The water and sewer pipes continue to erode behind the houses on
22 Driftwood Cottage. There needs to be an immediate plan to protect
23 those pipes. From my understanding there is an emergency order
24 that the Melrose POA obtained to create a temporary road for
25 emergency access which has now washed away. That allowed for
26 large sandbags to be placed. I am suggesting in addition to whatever

1 plans you already have is to contact Tim Whitaker [...] who did the
2 work. He should be able to bring in those bags ASAP. He would
3 need to put down some sand to cross over to place them. I have
4 instructed my lawyer Rene Jose of Turner Padgett to begin
5 proceedings to compel the water company to run water and sewer to
6 our property across the golf course from the homes on Martinagel
7 that have service if the service across Driftwood is lost.
8

9 *See* DIUC's Responses to Office of Regulatory Staff's First and Continuing Audit
10 Information Request at DIUC 0009 to 0010.

11 Mr. Halwig essentially demanded that DIUC install erosion control devices (like
12 those that cost the MPOA \$60,000) and then to relocate the water and sewer lines
13 to DLC. DIUC responded that "Though South Carolina is currently under a state
14 of emergency we are doing everything in our means to continue service to your
15 water and sewer laterals." *See* DIUC's Responses to Office of Regulatory
16 Staff's First and Continuing Audit Information Request at DIUC 0009 to 0010.

17 DIUC further explained, "We are continuing to provide uninterrupted service to all
18 customers in the Driftwood area. Our operators are monitoring the service main
19 daily and are working with outside contractors to protect the system." *See* DIUC's
20 Responses to Office of Regulatory Staff's First and Continuing Audit Information
21 Request at DIUC 0009 to 0010.

22 In sum, in 2015 while service was being provided, Mr. Halwig was asserting DIUC
23 should install new lines for a second time to DCL and that DIUC should be
24 providing the erosion control devices for the road that the MPOA was no longer
25 providing.

26 At this same time Mrs. Halwig was also concerned about the fact that there was no
27 reliable access to DCL. She explained in an October 10, 2015, email to Ken Crow:

1 As we discussed this situation has been a multi year problem
2 exacerbated by the each spring and fall high tides. We have
3 repeatedly asked Pelorus and the Arnolds to maintain and to repair
4 their portions of the seawall. Unfortunately neither party has for
5 whatever reason been able to fulfill their obligations to maintain
6 their properties which has resulted in numerous blowouts and
7 ultimately major erosion of their properties. Their neglect has
8 impacted us with significant ongoing water damage and a need for
9 us to battle erosion of our property.

10 [...]

11 [T]he area south of the seawall has been completely degraded
12 extinguishing the paved access road, the lots, the temporary access
13 road and now the sewer and water pipes are exposed and are
14 imperiled.

15
16 As a result we are now landlocked by the golf course and logs which
17 were placed in front of our properties and the roadway along the
18 Noller properties.

19
20 We request a temporary easement for delivery of essential services
21 and for access to our home across the golf course between the 16th
22 green and the 17th tee box. We need a road that is solid enough to
23 hold the weight of routine service vehicles such as propane delivery,
24 garbage pick up and yard maintenance. It also must be wide enough
25 for a fire truck, an ambulance, and equipment to repair the seawall
26 and replace sand. We realize the need for a roadway that is attractive
27 and suggest crushed oyster shells over a roadbed of packed sand or
28 however such roads are constructed. Haig Point has several of these
29 type of roadways along their waterfront.

30
31 We would be willing to agree to cross the golf course at our own
32 peril and when crossing with a motorized vehicles to use only the
33 easement road. Our rental guests would be told and required to sign
34 a waiver of liability to both the course and to us for the peril of
35 crossing the course. We would tell them they will face fines and
36 actions against them by course management for failure to stay on the
37 easement road. We will require rental guests to sign and
38 acknowledge the rules, waive liability and to be made aware of fines.

39
40 *See* DIUC's Responses to Office of Regulatory Staff's First and Continuing Audit
41 Information Request at DIUC 0001 to 0002,
42 In November 2015, DIUC received a letter from Rene Josey of Turner Padgett Law
43 Firm, dated November 10, 2015, who wrote on behalf of the Complainants. *See*

1 Exhibit MJG-2. After receipt of this letter, DIUC had communications with
2 members of the Office of Regulatory Staff (ORS), our (DIUC) wastewater
3 compliance inspector with DHEC, Penny Cornett, and phone conversations with
4 Ken Crow. In these communications various aspects of the erosion situation and
5 its impact on water and sewer mains were discussed. DIUC was attempting to find
6 a resolution that it could complete within the limitations imposed upon it by law,
7 cost, and feasibility. Following these communications DIUC provided a letter to
8 Rene Josey, dated December 10, 2015, explaining DIUC's position, based on all
9 the input provided. *See* DIUC's Responses to Office of Regulatory Staff's First and
10 Continuing Audit Information Request at DIUC 0019.

11 Neither the Complainants nor Rene Josey responded to the letter. Throughout
12 2016, DIUC continued to provide service to the Complainants at 36 and 46 DCL.
13 Then, on October 7, 2016, the initial outer bands of Hurricane Matthew began
14 making landfall in South Carolina, the heaviest and most hard-hitting effects of the
15 storm occurred through October 8 and had passed further north by October 9, 2016.
16 In the days leading up to Hurricane Matthew, DIUC prepared its utility system
17 according to its emergency guidelines. On October 9, 2016, Eric Johanson gained
18 access to Daufuskie Island with an emergency pass and met with another DIUC
19 operator, Kevin Fitzpatrick. Mr. Fitzpatrick is a permanent resident of Daufuskie
20 Island and he had remained on the island during Hurricane Matthew. Both Eric and
21 Kevin began a full system inspection and site evaluation for damage due to the
22 storm. While in communication with emergency services and completing their
23 initial systematic evaluations, it was determined that there was a water main break

1 in the distribution system. Suspecting the break to be at DCL, both operators
2 immediately made their way to DCL on foot. There were downed trees and
3 powerlines and other various debris prevented use of vehicle. At DCL they
4 discovered that a large portion of the beach and an even larger portion of DCL was
5 gone. As a result, even more of the previously reinforced 8" water main was
6 exposed.

7 Inspection revealed that the portion of the main reinforced in 2015 had withstood
8 the storm, but the water main formerly protected under the road (but now exposed)
9 had failed. The operators isolated a small section of water main by closing a valve
10 near the residence at 20 DCL. This remedial measure shut off services to three
11 properties on DCL -- 22, 36 and 46. This action was conducted pursuant to
12 applicable laws and regulations, including S.C. Reg. § 103-535.

13 Following my arrival on Daufuskie Island, I worked with DIUC operators,
14 emergency crews and volunteers. The amount of overall damage to the island was
15 extensive. During our evaluation and emergency response efforts, which ended up
16 lasting weeks, the immediate and primary concern was keeping any and all
17 wastewater below ground so as to prevent hazardous and dangerous conditions.

18 **Q. Did DIUC at this point in time determine that providing sewer service to the**
19 **Complainants' properties would be hazardous or dangerous?**

20 **A. Yes.**

21 **Q. And is that why service was not provided again after late 2016?**

22 **A. Yes.**

1 Q. What regulation does DIUC rely upon for denying service based upon its
2 conclusion that to do so would be hazardous or dangerous?

3 A. S.C. Reg. § 103-535 states that "Service may be refused or discontinued ...
4 [w]ithout notice in the event of a condition determined by the utility, the
5 commission by order, or the South Carolina Department of Health and
6 Environmental Control to be hazardous or dangerous."

7 Q. What happened after Hurricane Matthew?

8 A. In the weeks following Hurricane Matthew, DIUC spoke with Terry Lee
9 Contracting about the feasibility of conducting another repair to the damaged 8"
10 water main. Simultaneously, our operators were looking into repairs necessary to
11 the force main. It quickly became apparent, as I noted in a November 14, 2016,
12 email communication with Chad Campbell of ORS, "Unless the road and
13 surrounding area is restored and adequately protected from any future erosion, it
14 would not be possible to reinstall the main at that location." See DIUC's Responses
15 to Office of Regulatory Staff's First and Continuing Audit Information Request at
16 DIUC 0020.

17 Q. Did MPOA again rebuild the road and surrounding area after Hurricane
18 Matthew in late 2016?

19 A. No. The then-president of MPOA explained the decision in an email stating:

20 The Melrose POA has made extensive efforts to protect and repair
21 Driftwood Cottage Lane. Unfortunately the Atlantic Ocean has
22 proved to be a force we cannot compete with. At this time, most of
23 the road right of way and easement owned by the MPOA no longer
24 exists – it is under water. The MPOA has utilized every reasonable
25 option available to protect Driftwood Lane, but those options are
26 limited by what the Ocean Coastal Resources Management agency
27 will allow. The only temporary protective devices allowed by

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1 ORCM are sandbags and sand backfill. After finally receiving an
2 Emergency Permit for road protection, in the spring of 2015 we
3 spent over \$60,000. installing heavy duty Geo sandbags and
4 dumping tons of sand backfill to protect the road. The king tides of
5 October 2015 washed most of that away and successive storms have
6 completed the destruction and caused even further erosion. The
7 MPOA cannot reconstruct or protect Driftwood Cottage Lane
8 because it is not allowed to use the materials necessary to ensure any
9 permanence to the effort.

10
11 See Email, December 19, 2016, from Julie DiIullo, MPOA President, to Michael
12 Guastella, Produced with DIUC's Response to Complainants' First Set of
13 Discovery at DIUC 0140.

14 Q. Without a roadway and erosion protection on DCL, could DIUC install new
15 infrastructure to service 36 and 46 DCL?

16 A. No. There was no easement, it had been washed away. The only way to connect
17 service to the Noller and Halwig houses would be to obtain a new utility easement
18 in an area that could be adequately protected from erosion or other threats. After
19 that, infrastructure would need to be designed and rebuilt; this would be a costly
20 endeavor to benefit only two ratepayers whose service use was likely to be very
21 short term. As noted in the prefiled testimony of John Guastella, it was not
22 appropriate for DIUC to incur those costs for the benefit of two ratepayers. The
23 homes at issue lack any significant protection from erosion and equipment installed
24 would likely not last very long at all before again being destroyed by erosion.

25 Q. Did you discuss this situation with anyone from ORS?

26 A. Yes.

27 Q. Why did you do that?



Exhibit MJG-3

THE OFFICE OF REGULATORY STAFF

DIRECT TESTIMONY

& EXHIBITS

OF

DAWN M. HIPPIE

FEBRUARY 6, 2019



DOCKET NO. 2018-364-WS

**Stephen and Beverly Noller and Michael and Nancy Halwig,
Complainants/Petitioners v. Daufuskie Island Utility Company,
Incorporated, Defendant/Respondent**